

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a left shoulder or cervical condition causally related to the accepted November 5, 2015 employment incident.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 4, 2015 appellant, then a 60-year-old executive services administrator, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2015 she injured her left shoulder and neck due to pushing and pulling carts and turning over white plastic folding chairs while in the performance of duty. She explained that she was pushing and pulling carts containing equipment and supplies for an employing establishment event. Appellant moved the carts from the loading dock to the freight elevator, up to the 13<sup>th</sup> floor, and then down a carpeted corridor to the lobby. She also inverted plastic folding chairs to remove wrapping, and then flipped the chairs upright. Appellant did not stop work.

By decision dated February 12, 2016, OWCP denied appellant's claim, finding that she had not submitted sufficient evidence to establish causal relationship between her diagnosed conditions and the accepted November 5, 2015 employment incident.

On February 7, 2017 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

By decision dated April 28, 2017, OWCP denied modification of its February 12, 2016 decision.

On October 11, 2017 appellant, through counsel, appealed to the Board.

By decision dated May 13, 2019, the Board affirmed the April 28, 2017 OWCP decision, finding that appellant had not met her burden of proof to establish that her claimed left shoulder and neck conditions were causally related to the accepted November 5, 2015 employment incident, as she had not submitted rationalized medical evidence to support her allegation.<sup>4</sup>

On April 21, 2020 appellant, through counsel, requested reconsideration.

In support of the request, appellant submitted a November 20, 2019 report from Dr. Neil Allen, a Board-certified internist and neurologist. Dr. Allen reviewed her history of injury and medical treatment, and noted that he conducted a physical examination. He argued that appellant's case should be accepted for aggravation of cervical spondylosis with radiculopathy and aggravation of cervical disc disorder with radiculopathy. Dr. Allen explained that the repetitive above-the-shoulder motions of reaching, pushing, pulling, lifting, flexing, and extending her

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<sup>3</sup> Docket No. 18-0071 (issued May 13, 2019).

<sup>4</sup> *Id.*

cervical spine, led to an aggravation of an asymptomatic underlying condition. He related that appellant had denied having symptoms of her claimed conditions prior to the November 5, 2015 incident. Dr. Allen noted that, in general, age-related deterioration accompanied by repetitive activity could render intervertebral discs susceptible to breakdown. He opined that appellant's cervical spine conditions were directly aggravated by the incident of November 5, 2015.

By decision dated May 22, 2020, OWCP denied modification.

On May 6, 2021 appellant, through counsel, again requested reconsideration.

In support of the request, appellant submitted a report from Dr. Allen dated June 5, 2020 clarifying his prior report. Dr. Allen diagnosed aggravation of cervical spondylosis with radiculopathy at the C4-5, C5-6, and C6-7 levels, and aggravation of cervical disc disorder with radiculopathy at the C4-5, C5-6, and C6-7 levels. He explained that on November 5, 2015 as a result of reaching, pushing, pulling, and lifting, the musculature of appellant's shoulders had fatigued and cervical paraspinal musculature activated to assist in shoulder elevation. Dr. Allen further explained that this change in structure resulted in increased stress and breakdown of the facet joints and discs at the C4-7 spinal levels, and that continuing to work in this compromised biomechanical state caused further deterioration.

By decision dated August 4, 2021, OWCP denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>6</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the

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<sup>5</sup> *Id.*

<sup>6</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>8</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.<sup>9</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>11</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

Preliminary, the Board notes that it is unnecessary for the Board to consider the evidence submitted, prior to OWCP's April 28, 2017 decision, because the Board considered that evidence in its May 13, 2019 decision, finding that it was insufficient to establish her claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>12</sup>

On reconsideration appellant submitted a June 5, 2020 report from Dr. Allen clarifying his November 20, 2019 report. Dr. Allen diagnosed aggravation of cervical spondylosis with radiculopathy at the C4-5, C5-6, and C6-7 levels, and aggravation of cervical disc disorder with radiculopathy at the C4-5, C5-6, and C6-7 levels. He explained that on November 5, 2015 as a result of reaching, pushing, pulling, and lifting, the musculature of appellant's shoulders had fatigued and cervical paraspinal musculature activated to assist in shoulder elevation. Dr. Allen further explained that this change in structure resulted in increased stress and breakdown of the facet joints and discs at the C4-7 spinal levels, and that continuing to work in this compromised biomechanical state caused further deterioration.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.<sup>13</sup>

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<sup>9</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>12</sup> See *K.V.*, Docket No. 21-0008 (issued November 15, 2021); *B.R.*, Docket No. 17-0294 (issued May 11, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

<sup>13</sup> *C.R.*, Docket No. 20-1102 (issued January 8, 2021); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

The Board finds that, while Dr. Allen's June 5, 2020 report is not fully rationalized, it raises an uncontroverted inference that appellant has a left shoulder and/or cervical condition causally related to the accepted November 5, 2015 employment incident.<sup>14</sup> Although the report is insufficient to meet appellant's burden of proof to establish her claim, it is sufficient to require OWCP to further develop the medical evidence.<sup>15</sup>

The case shall, therefore, be remanded for further development of the medical evidence. On remand OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted employment incident caused, contributed to, or aggravated the diagnosed conditions.<sup>16</sup> If the physician opines that the diagnosed conditions are not causally related to the accepted November 5, 2015 employment incident, he or she must explain with rationale how or why their opinion differs from that of Dr. Allen. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>14</sup> See *B.F.*, Docket No. 20-0990 (issued January 13, 2021); *Y.D.*, Docket No. 19-1200 (issued April 6, 2020).

<sup>15</sup> See *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *A.D.*, Docket No. 20-0758 (issued January 11, 2021); *C.R.*, Docket No. 20-0366 (issued December 11, 2020); *John J. Carlone, supra* note 9; *Horace Langhome*, 29 ECAB 820 (1978).

<sup>16</sup> *C.G.*, Docket No. 20-1121 (issued February 11, 2021); *A.G.*, Docket No. 20-0454 (issued October 29, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 4, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 28, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board